IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.96 OF 2005

Rashid Dagadu Mujawar. ... Applicant.
Versus.
The State of Maharashtra. ... Respondents.

Shri G.H.Keluskar for the Applicant.

Shri R.Y.Mirza for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 13th June, 2005.

P.C.:

1. Perused the order dated 5th May 2005 passed by this Court. This Court has already held that there is no infirmity in the view taken by the two Courts below in recording the finding of guilt against the Applicant for offence under section 304-A of the Indian Penal Code and section 184 of the Motor Vehicles Act.

2. While passing the said order this Court observed that what needs to be considered is whether the benefit under section 360 of the Code of Criminal Procedure, 1973 can be extended to the Applicant. The Court also observed that it needs to be considered whether the provisions of the Probation of Offenders Act 1958 should be applied to the Applicant. Therefore, this Court called for the report of the Probation Officer. The Probation Officer has submitted a report. The report makes certain observations in favour of the Applicant.

Shri Keluskar on behalf of the Applicant therefore, submitted that benefit of the said provisions be made available to the Applicant considering the antecedents of the Applicant. The learned A.P.P. relied upon the decision of the Apex Court reported in 2000 (2) Crimes 280 (SC) (Dalbir Singh v/s. State of Haryana). The Apex Court in the said decision held that the Criminal Court cannot treat the nature of offence under section 304A as attracting the benevolent provisions of section 4 of the Probation of Offenders Act, 1958. In paragraph 13 of the decision the Apex Court held thus:

> "13. Bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, criminal courts cannot treat the nature of the offence under section 304-A IPC as attracting the benevolent provisions of section 4 of the P.O.Act. While considering the quantum of sentence, to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence."

In the same decision the Apex court held that in case of offence under section 304-A of the Code the latitude should not be shown to the drivers who are guilty of offence.

3. In view of what is held by the Apex Court benefit cannot be given to the Applicant either of the provisions of section 360 of the said Code or section 4 of the Probation of Offenders Act 1958.

4. Shri Keluskar submitted that considering the family background of the Applicant the sentence may be reduced. In the light of the decision of the Apex Court in the case of Dalbir Singh (supra) the said course cannot be adopted as the Apex Court has held that no latitude should be shown to an offender under section 304-A of the Code. It is to be borne in mind that the maximum punishment prescribed for offence under section 304-A extend to two years and here the punishment which is awarded is of one year. The learned Sessions Judge has also considered the question of showing leniency to the Applicant. The said prayer has been rightly rejected by the learned Sessions Judge by noting that on account of rash and negligent driving of the Applicant one person lost his life and another person sustained multiple injuries including grievous injuries.

5. Hence there is no merit in the Revision Application. The same is rejected.

Judge.